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THE TRIAL OF GUITEAU.

The trial of Charles Junius Guiteau for the assassination of President James A. Garfield furnishes a remarkable illustration of the genius and spirit of our Government. Perhaps nowhere in the world, save in America, could such a trial be duplicated. The prisoner himself, without friends and without money, but defended by eminent counsel, demanding the full protection of the law and of every guarantee of the Constitution, was accorded every right that could be extended to the most distinguished defendant.

At the time of the tragedy, Guiteau was, according to his own testimony, a lawyer, lecturer, theologian, politician and statesman. The immediate occasion of the crime was his failure to receive the appointment from President Garfield to the Consulship at Paris, which position he believed himself entitled to because of services he had rendered in the campaign preceding Garfield's elevation to the Presidency. These services consisted principally, if not entirely, of a speech, entitled "Garfield Against Hancock," delivered by the self-styled "Little Giant from the West" in New York, but a short time prior to the election. Guiteau's feelings, which had hitherto been characterized by the highest regard for the President, grew into intense bitterness when he was bluntly told at the State Department, by Secretary Blaine, whom he had often importuned, that he did not have the slightest chance of being appointed to the position he sought.

It is now a matter of history that between the President and certain prominent men, headed by Senator Conkling and General Grant, there was a very grave difference of opinion as to the policy to be pursued by the incoming administration. The term "Stalwarts," invented by Mr. Blaine himself, was used to dis-

tinguish the supporters of Grant, and the term "Half-Breeds" applied to those who were not "Stalwarts." Conkling had supported Grant for a third term, and the bitterness engendered by the failure of the latter to receive the nomination was rendered all the more acute when the President, without consulting the Senators from New York, appointed Judge Robertson, a "Half-Breed," Collector of Customs in that city. This appointment culminated in the resignation of Conkling and Platt from the Senate. Guiteau seized upon this unfortunate family quarrel and conceived the idea of "removing" the President, as he termed it, in order to bring about harmony in the Republican party. Apparently he believed himself inspired to do the deed, just as much as Charlotte Corday felt herself inspired to remove Marat.

On the 18th of June, 1881, just two weeks before the tragedy, Mrs. Garfield, who was in delicate health, on the advice of her physician went to Long Branch, whither she was accompanied by the President. On the morning of their departure, Guiteau was at the Pennsylvania depot with his bulldog revolver, purchased with money borrowed ostensibly for the purpose of paying a board bill. He saw the President and Mrs. Garfield as they passed to the train, but, according to his own statement, his heart failed him to part them because Mrs. Garfield "looked so thin and clung so tenderly to the President's arm." On another occasion he followed the President to the little Vermont Avenue Christian Church with a view to killing him there, located his pew by looking through the window, but for some strange reason desisted the second time. The very evening before the fatal morning of July 2d, Guiteau left the Riggs House, where he was stopping at the involuntary expense of the proprietor, and repaired to the Lafayette Park, in front of the White House. Soon the President emerged, and immediately started for the home of Secretary Blaine—a spot already rendered infamous by the attempted assassination of Secretary Seward. The President while *en route* almost brushed past the assassin, who was crouching under the cover of darkness. Guiteau awaited his victim in the alley adjoining the house with his hand on his revolver; but the President on leaving was accompanied by the Secretary, and the two were engaged in earnest conversation. Again the life of the President was spared. Why the fatal moment was postponed until the fol-

lowing morning, only Providence can tell. We are told that the President was weary with official cares and was on his way to join his convalescent wife at Long Branch and commingle with the comrades of his student life in a reunion in the halls of his Alma Mater. He left the Executive Mansion in company with the Secretary of State. Guiteau rose early that morning and repaired to the banks of the Potomac, where he practiced his markmanship by shooting at sticks sunk in the mud. He preceded the presidential party to the station by less than an hour. Before taking his stand at a convenient place on the inside, he carefully made his plans. These consisted of a private examination of his weapon, and the engaging of a hack to take him to the Congressional Cemetery, and the leaving of certain papers at the news stand in the depot, which, among other things, were to announce to the American people the "martyr's" purpose that animated him to commit the dastardly deed. The tragedy followed the events recited so swiftly and have left such an impression that it is hardly necessary to recall what is now a matter of history. The President and Secretary Blaine arrived at the depot and lingered for a few moments in the carriage engaged in conversation, during which time the assassin stood gazing at them through the window. As they passed through the ladies' waiting room on their way to the train, the Secretary being a little ahead of the President, Guiteau advanced from the rear and fired two shots, both of which took effect, and the President sank to the floor. The police immediately apprehended the prisoner, who made no attempt to escape, and with difficulty—so intense was the popular indignation—landed him in the District Jail. He afterwards attributed his rescue from the fury of the populace to the Deity, who, he avowed, commanded him to do the deed.

The trial began on Thursday, November 17th, 1881, and, barring the time consumed by the proceedings in the appellate court, was concluded on February 4th, 1882, thus occupying the exclusive attention of the court and jury for more than ten weeks. During this time one hundred and forty witnesses were examined, twenty-five of whom were medical experts. Notable among these witnesses were the Surgeon General of the United States, a foreign minister, a member of Congress, two United States Senators,

the Secretary of State and the Commanding General of the Army. President Arthur was summoned to appear by the defense, but for obvious reasons he ignored the summons. Some further idea of the magnitude of the trial may be gathered from the fact that the record would cover not less than five thousand pages of the ordinary law volume.

A word might be added concerning the *personnel* of those who conducted the trial. Judge Walter S. Cox presided—an eminent jurist, but with perhaps too much of the milk of human kindness for the trial of criminal causes. The Government was represented by Mr. George B. Corkhill, the District Attorney, assisted by Mr. Walter D. Davidge, of the District of Columbia bar, and Mr. John K. Porter, of the New York bar. The latter gentlemen were appointed by the Attorney General under Garfield, Mr. Wayne MacVeagh, who exercised this power of appointment with the concurrence and approval of President Arthur and his Cabinet. Of Mr. Davidge's qualifications it might be said that during his career at the bar in Washington, there was scarcely any case of importance or difficulty in which he did not appear as counsel on one side or the other. Mr. Porter was one of the leaders of the New York bar and had but recently added to a reputation already illustrious by the part he took in the famous Tilton-Beecher trial.

The prisoner was profoundly impressed with the sufficiency of his own ability to represent himself: "(The court)—'Counsel has been assigned to you.' (The prisoner)—'Not with my consent. The law reads that when a man wants counsel he might have it. If your Honor don't coincide with me, I am going to make a noise in the country about it.' (The court)—'Keep silent now; I don't want any more discussion from you. (The prisoner)—'I would not trust my case to the best lawyer ever made. I know my position and my views in this matter. One or two blunderbuss lawyers constitute my entire defense and I won't allow it if I can help it.'" The court insisted, however, upon appointing Mr. Leigh Robinson to represent Guiteau. Mr. Robinson was well qualified by his high personal and professional attainments for the difficult task which the court assigned him and which he reluctantly accepted. He retired from the case, however, before the trial had lasted more than a week, because his views of the defense were irreconcilably opposed to those of his associate coun-

sel. Mr. George Scoville was the only lawyer who represented Guiteau throughout the trial. Inasmuch as his practice had theretofore been confined largely to the examination of land titles, it is evident he never would have appeared as leading counsel for the defense but for the fact that he had married a sister of the defendant. Later Mr. Charles H. Reed, a member of the Chicago bar, was associated with Mr. Scoville. The former's practice had been confined to the prosecution of petty criminals in the police court of Chicago, where he had met Guiteau when the latter first came to the bar. Mr. Reed appeared in a dual capacity, inasmuch as he was examined as a witness for the defense before he appeared as counsel.

Three defenses were interposed for the prisoner. It developed on the cross-examination of the physicians who attended the President that the defense of malpractice on their part would be set up. This contention, however, was apparently abandoned after Mr. Robinson's retirement from the case. It was insisted in the second place that the court was without jurisdiction to try the defendant, inasmuch as the President was shot in the District of Columbia on the second day of July, 1881, and lingered until the 19th of September of the same year, actually dying at Elberon, New Jersey; the plea being that to constitute murder death must take place in the same jurisdiction in which the wound was inflicted. There seems to have been a distinguished precedent for this contention. It will be remembered that Aaron Burr shot Alexander Hamilton in New Jersey and that death did not ensue until he had been taken to his home in New York. It is generally understood that Mr. Burr, who was Vice-President of the United States at the time, was not prosecuted because there was no law providing a penalty where the wound was inflicted in one jurisdiction and death followed in another. The validity of this contention was denied by the court in general term, to which the case was sent for review.

The third ground insisted upon by the defense was that of insanity—by all odds the most important—and the consideration of which occupied for the most part the attention of the court and jury. Eminent insanity experts testified both for the prosecution and defense. No one at this day questions the sincerity of the experts who testified, or the sincerity and intelligence of

the jury who passed upon their evidence. Many thoughtful people at the time doubted the sanity of Guiteau, and that doubt is perhaps now shared by an increasing number. The effect of the trial was not to add to the repute of insanity experts. Before criticism, however, is passed upon the conclusion reached by the jury, it should be borne in mind that the trial followed the death of the President only two months and that there was a popular clamor calling for a speedy conviction of the prisoner, the influence of which upon all who participated in the trial cannot be adequately appreciated at this time. One intelligent spectator voiced to some extent this sentiment when he said that he believed he would lose business which he could not regain in twenty years if he were on the jury and voted for an acquittal. It can be understood now that it would have been far better for the cause of free government throughout the world if the jury by their verdict had declared that conditions did not exist in this Government that were calculated to produce sufficient hatred in the mind of a sane person as to cause him to kill the Chief Executive. The conviction that he was insane was shared by Charles D. Farwell, a member of Congress from Chicago, and General John A. Logan, both of whom being from the defendant's own State, had been importuned by him to procure their indorsement for the Paris Consulship. The latter was strongly empressed with Guiteau's insanity, and, with Farwell, gave evidence that supported the theory of the defense.

A curious feature of the case consisted in the fact that but a short time before the fatal July second, a person styling himself Charles J. Guiteau, a lawyer, theologian, and statesmen, and an applicant for a foreign mission, made application for a pension, and was examined by the Pension Medical Board of Experts, who pronounced him insane. While it is true that at least two of these experts were afterwards unable to identify the prisoner as the man who was the subject of their previous examination, yet it cannot be doubted that this evidence was of the utmost importance, for it tended strongly to show that in the judgment of competent experts Guiteau had been pronounced insane long before his "removal" of the President. While perhaps its introduction would not have changed the result, yet it would have gone far to convince the public of his insanity. It can scarcely be conceived

that there were two persons in Washington at the same time, both of whom designated themselves in the same peculiar manner and both of whom were applicants for a foreign mission. Why this evidence was not produced will perhaps always remain a matter of conjecture.

History furnishes abundant illustration of that form of insanity which selects the most shining marks as its victims. No less than five attempts were made to assassinate Queen Victoria, and, these attempts failing, the authorities had no difficulty in reaching the conclusion that they were the acts of madmen, and they dealt with the offenders accordingly. It is but seldom recalled that in 1836 a man by the name of Lawrance snapped a pistol twice in the face of President Jackson in the Capitol, where he was attending the funeral of a member of Congress. The defendant's trial, which was very brief, took place in Washington, and he was acquitted on the ground of insanity and sent to the asylum. A wretch by the name of Hadfield attempted to kill George IV in Drury Lane Theatre, and the King's life was spared through poor marksmanship. Under the English law Hadfield was indicted for high treason, and, like Guiteau, being friendless and penniless, the court assigned to defend him one of the most eloquent advocates in English history—Lord Erskine. A verdict of not guilty followed a speedy trial, and the defendant spent the remaining forty years of his life in an asylum. It can scarcely be doubted that if Guiteau's offense had been, like that of Lawrance and others, merely an assault with intent to kill, he would have been promptly acquitted, and, being a comparatively young man, might now be one of the most notorious inmates of the Government Hospital for the Insane.

Naturally Mr. Blaine was called to the stand as the first witness for the prosecution. It is putting it mildly when it is said that he made a good witness. Mr. Blaine's account as an eye witness of one of the world's great tragedies was a plain, straightforward narrative, shorn of all embellishment of language, in the use of which he was known to be a master. His impressions he gave as impressions, and his facts stated as facts; nor did his testimony vary one hair's breath under a rigid cross-examination. His vivid narrative reminds one of the later account given of this tragedy by the same distinguished witness when he delivered his

eulogy on Garfield. His unadorned testimony was but the raw material for one of the world's finest orations.

Benjamin Harrison, then a Senator from Indiana, also testified for the prosecution. Mr. Harrison was but one of the many prominent men of this country with whom Guiteau, without the slightest foundation, claimed an intimate acquaintance.

Another witness of more than ordinary interest was General William T. Sherman, to whom was addressed one of the communications left at the news stand in the depot by Guiteau but a few minutes before the tragedy. The communication informed General Sherman that the President had been shot, and, anticipating the violence of an outraged community, it asked General Sherman to order out the troops to take possession of the jail at once. In his testimony General Sherman said that, fearing a conspiracy, he did as a matter of fact order out the military force of the Government, which consisted of four companies of artillery commanded by Col. R. S. Ayres.

Another eye witness of the tragedy was Simon Camacho, the Minister from Venezuela. Under the well-known principle of international law Mr. Camacho might have been relieved from giving testimony, being exempt from the service of process or from being sworn as a witness in any case. Under the instructions of his country, however, which was friendly to the United States, and out of respect for the memory of the President, he waived his rights and appeared as a witness, submitting himself to the cross-examination of the American lawyer—a thing generally regarded as humiliating to the dignity of the diplomat.

Perhaps no prisoner at any bar on trial for any offense was ever allowed greater latitude or shown greater indulgence by the court, so great was the desire that he might be accorded every safeguard that the law permitted. This disposition on the part of the court, however, was greatly abused by the prisoner, who throughout the trial constantly interrupted counsel and the court with observations that were neither pertinent nor temperate. If the prisoner had been guilty of physical violence he might, under the law, have been removed and his trial could have proceeded in his absence, but there was no law giving the court this power where the prisoner indulged in violent and abusive language. His contumacious conduct had much to do with the unreasoning clamor

throughout the land for his conviction, for, in the popular mind, to the unpardonable offense of assassinating the President, he thus added the revolting conduct of a blackguard. Guiteau was apparently imbued with the idea that his name had become illustrious because he had murdered an illustrious man. His mind seems to have been fashioned after that of a certain character in one of Ouida's novels, who would prefer to be the ugliest man in Europe rather than remain among the medium plain faces, holding that there was only a hair's difference between notoriety and fame. With fine irony one of counsel for the prosecution upon being interrupted unceremoniously one morning by Guiteau, just after the court convened, remarked that "as usual the court has been opened by the prisoner, by whose permission I am permitted to add a few words."

Before the trial was concluded the extraordinary fact developed that the defendant had one theory for the defense and his counsel another; the latter believing him to be insane, not only at the time of the assassination, but that this insanity continued up to and throughout the trial; while the prisoner advanced the theory, entirely his own, that at the time of the tragedy he was suffering with what he termed "transitory mania" and had committed the deed under the special inspiration of the Deity, after two weeks of prayer on his part. The unusual character of the proceedings was sustained throughout the trial. Perhaps there has been no case in the criminal annals of this country to which the newspapers devoted so much attention. Several times during the proceedings the prisoner handed to representatives of the press certain documents which he styled "Proclamations to the American People," setting forth his own theory of the case and making violent appeals for public sympathy. Of course these so-called addresses were repudiated by counsel associated with him, but they did much to agitate the public mind and increase the clamor for his conviction. It was known from an early stage in the proceedings that Guiteau would address the jury in his own defense, and this knowledge was not calculated to allay the excitement which characterized the entire trial. Not the least remarkable feature of this so-called address to the jury consisted in the fact that it was published at the instance of the prisoner in the Sunday edition of the New York *Herald* six days before it was actually delivered

to the jury. Indeed it was read by the prisoner from a copy of the *Herald,* and its perusal was interrupted by his off-hand comments. One lamentable fact was developed by this speech, which showed strikingly the state of the public mind, amounting almost to hysteria. Guiteau stated, and there is no reason to doubt the statement, that he had received fifteen hundred or two thousand letters and telegrams from every section of the country, manifesting the sympathy of the senders. Most of these communications were addressed to the Honorable Charles J. Guiteau, so exalted had he become in the estimation of his admirers. One or two samples will suffice: "All Boston sympathizes with you. You ought to be President. (A host of admirers)." From Colorado: "Ten thousand citizens of the Centennial State hail you as a martyr to the cause of American freedom." From Wisconsin: "What a pity that a republican form of government allows you to suffer for an act you surely intended for its benefit. May God bless you and hasten the time when you will be set free. Your name is sung all over the land as a national hero."

Some of these communications were sent in derision, prompted by the same motive that caused his admirers to send him bogus checks to help defray his expenses; but many hundreds of them doubtless came from people whose sympathy was sincere and whose conviction strong that he had done a praiseworthy act. One morning in the closing days of the trial, Guiteau arose from the dock and gravely announced to the court that he desired to express public appreciation to the ladies of the country who had sent him so many touching and tender messages of sympathy. Some of these admirers thought he ought to have a place in Arthur's Cabinet, but with becoming modesty, he disclaimed any intention of accepting such a position if it were tendered him.

The trial also furnishes a striking illustration of how frequently in the heat and excitement of an important law case, charges are made without the slightest foundation in fact. For instance, it was charged that the United States Attorney was prosecuting the prisoner for the sake of inordinate fees. The reply was made by the prosecution, and this reply was not challenged, that Mr. Corkhill, who held this position, was in receipt of the munificent salary of two hundred dollars a year, this income having been fixed in advance by law, which also provided that he

should receive twenty dollars for the trial of each case. As the trial lasted for two months and a-half, the District Attorney, upon whom the burden of the prosecution rested, in one of the most notable trials in history, received for his services less than seventy cents a day—much less than the compensation of any one of the jurors who sat in the case. The charge when applied to the lawyers who assisted in the prosecution was equally groundless, inasmuch as the compensation of Messrs. Porter and Davidge was under the law to be fixed by the Attorney General of the United States, and was to be wholly independent of the issue of the trial, whether it resulted in a conviction or acquittal.

The clamorous charge was also made by the defense that the witnesses for the prosecution, particularly the experts, were paid extraordinary fees for the purpose of convicting the helpless defendant. As a matter of fact the experts received the same compensation allowed other witnesses—$1.25 per day. Some of the experts naturally supposed they were entitled to more, but the law being otherwise they had no alternative than to testify. Perhaps the most eminent was Dr. John P. Gray, superintendent of the New York State Lunatic Asylum, in which position not less than twelve thousand lunatics had come under his immediate control and observation. Besides, he was the editor of a journal on insanity and professor in at least two medical colleges. He spent more than two months in Washington at the instance of the Government, and instead of receiving $200 per day, as charged by the defense, the papers on file show that the total amount he actually received, both for testifying and for mileage, was $175.25. It was in view of such charges as these that one of the eminent counsel for the prosecution was led to observe that the disciples of the school of Guiteau had great confidence in the maxim of Aaron Burr, which, with slight deviation, he thought would apply to this case: "Truth is that which is uttered with effrontery, enforced by persistence and imbedded by reiteration."

The District Attorney fittingly expressed the sympathy of the entire country in the following language to the jury: "No verdict of yours can recall President Garfield. He 'sleeps the sleep that knows no waking' on the peaceful banks of the beautiful Lake Erie, whose limpid waters wash the boundaries of his native State, overlooking the city he loved so well; and beneath the sod

of that State, whose people had crowned his life with the highest honors. It is too late to call the husband back to his beloved wife and fatherless children. For the faithful little mother, whose face will never fade from the nation's memory, there can be no relief in this world. The fatal deed is done and its horrors must remain. The honest, patriotic, law-abiding people of this country are waiting for your verdict to see if the man by whom this great offense came shall suffer the just and merited punishment of the law."

Perhaps the highest point of eloquence reached during the protracted trial was in the closing words of the last address to the jury by Mr. Porter: "The plotting murderer who slaughtered President Garfield knew that against the laws of God and man he was breaking with bloody hands into the house of life. He did not know that over his own grave, if grave he is to have, will be written by the general consent of mankind, in dark letters, an inscription appropriate to the grave of a coward, an ingrate, a swindler, and an assassin. The notoriety which he has sought will be found in the inscription. He did not know what we do, that, even though by a lingering death the President yielded up his life, by the hand that aimed that pistol at his back, the assassin unconsciously wrote the name of James A. Garfield in characters of living light upon the firmament, there to remain as radiant and enduring as though every letter were traced in living stars."

E. HILTON JACKSON.

Washington, D. C.

EDITORIAL NOTE—The case of *United States* v. *Guiteau* may be found in 1 Mackey, 498, 47 Am. Rep. 247. One phase of the question of jurisdiction mentioned by Mr. Jackson was discussed by Professor Raleigh C. Minor on pages 591 and 592 of the present volume of the VIRGINIA LAW REGISTER, the conclusion arrived at being that section 3667 of the Code of Virginia, which was apparently intended to prevent a miscarriage of justice, is insufficient for all purposes. It provides only that "if any person *be stricken or poisoned in*, and die by reason thereof, out of this State," the offender shall be as guilty as if the death had occurred where the stroke or poison was given or administered. No provision is made for a case of a shot fired from this State and taking effect upon its victim in another State. The attention of the legislature was called to the question, but without result. One of these days a murderer standing on the Virginia side of Main street in Bristol will shoot to death a man on the Tennessee side of the street, and when Tennessee applies to Virginia for the extra-

dition of the murderer, it may meet the same response that it did from North Carolina in *State* v. *Hall*, 114 N. C. 909, 41 Am. St. Rep. 822, namely, that the accused not having been in Tennessee since the crime, *could not have fled from it* And then a cry will go up against the impotence of the courts and this preposterous condition of the law genrally. But the courts cannot exercise a jurisdiction which has not been conferred. The responsibility will lie with the origin and source of jurisdiction—the law-making power.

SUGGESTED CHANGES IN PRACTICE.

PEREMPTORY INSTRUCTIONS, WHERE EVIDENCE NOT SUFFICIENT TO SUSTAIN VERDICT—POWER OF APPELLATE COURT REVERSING JUDGMENT FOR PLAINTIFF, TO ENTER OR DIRECT LOWER COURT TO ENTER JUDGMENT FOR DEFENDANT.

In the case of *White* v. *Hoster Brewing Co.*, 41 S. E. 180, 8 Virginia Law Register, 293, 885, the Supreme Court of Appeals of West Virginia, breaking away from the long line of precedents in that state and in Virginia, unanimously affirmed the right of a trial court to instruct a jury to find for a party in whose favor the evidence plainly and decidedly preponderates. It stated the question thus:

"The few contradictory statements alleged are not sufficient in importance to materially affect the decided preponderance of evidence, circumstantial and oral, which is undoubtedly in favor of the defendant. On the strength thereof the court instructed the jury that 'the evidence in this case cannot warrant a verdict for the plaintiff, and they are therefore instructed to find for the defendant.' There is no question but that, if a verdict had been returned on the evidence it would have been the duty of the court to set it aside, because opposed to the plain and decided preponderance of the evidence. Although the rule prevails in the United States courts and in a majority of State courts that in such a case a verdict should be directed when asked, it has not heretofore been adopted in this State. 6 Enc. Pl. & Prac. 679. The leaning of the early courts of Virginia has been towards the 'scintilla of evidence' rule, although in following it repeated verdicts may have to be set aside as contrary to the decided weight and plain